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EASON *v.* LYONS *et al.*

Jan. 16, 1913.

[76 S. E. 957.]

1. Fraudulent Conveyances (§ 278*)—Husband and Wife—Burden of Proof.—Transactions between husband and wife must be closely scrutinized to see that they are fair and honest, and in case of a grant by a husband to his wife she has the burden of proving the bona fides of the transaction as against his creditors; all presumptions being in their favor.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 801, 802; Dec. Dig. § 278.* 6 Va.-W. Va. Enc. Dig. 581; 14 Va.-W. Va. Enc. Dig. 487; 15 Va.-W. Va. Enc. Dig. 438.]

2. Fraudulent Conveyances (§ 300*)—Consideration—Evidence.—In a suit to set aside a debtor's conveyance to his wife, evidence held insufficient to show an actual consideration.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 896-903; Dec. Dig. § 300.* 6 Va.-W. Va. Enc. Dig. 669; 15 Va.-W. Va. Enc. Dig. 443.]

3. Fraudulent Conveyances (§ 225*)—Estoppel—Conveyance to Wife.—Where a debtor, who owned several parcels of land, conveyed one of them to his wife, and gave his creditor a deed of trust on the others, the delivery by the creditor to the debtor's wife of a paper reciting that the deed of trust had no reference to a farm which the wife owned in her own name will not, where it appears that the creditor at the time refused to release any claim she might have to that farm, estop him from attacking the conveyance.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 653-657; Dec. Dig. § 225.* 6 Va.-W. Va. Enc. Dig. 641.]

4. Witnesses (§ 52*)—Equity (§ 202*)—Competency—Husband and Wife.—In a suit by a creditor to set aside a conveyance by a husband to his wife on the ground of fraud and want of consideration, the wife's separate answer, setting up that the conveyance had been approved by plaintiff, who had agreed not to enforce his debt against that land, cannot be considered as a cross-bill, but must be accepted as an answer, it appearing that the special defense entitled her to no relief which she could not have obtained by plea or answer, and that she sought no discovery; consequently the filing of the answer did not begin a new and distinct suit, which would render both defendants competent witnesses as to the ratification of the conveyance despite Code 1904, § 3346a, providing that neither a husband nor wife shall be competent to testify for or against each other in any proceeding by a creditor to impeach any conveyance

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

from one to the other on the ground of fraud or want of consideration.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 124, 126-136, 165, 415-417, 419, 424; Dec. Dig. § 52;* Equity, Cent. Dig. §§ 469, 470; Dec. Dig. § 202.* 13 Va.-W. Va. Enc. Dig. 921; 15 Va.-W. Va. Enc. Dig. 1093.]

Appeal from Circuit Court, Norfolk County.

Bill by Samuel W. Lyons against Narcissus C. Eason and another. From a decree for complainant, the named defendant appeals. Affirmed.

L. D. Starke and *D. Tucker Brooke*, both of Norfolk, for appellant.

Frank L. Crocker, of New York City, for appellee.

HARDY et al. v. COLEY et al.

March 13, 1913.

[77 S. E. 458.]

Judicial Sales (§ 41*)—Resale—Advance Bid.—A judicial sale should not be set aside and a new sale ordered solely because an advance bid of 10 per cent. has been ordered.

[Ed. Note.—For other cases, see Judicial Sales, Cent. Dig. § 79; Dec. Dig. § 41.* 8 Va.-W. Va. Enc. Dig. 773; 14 Va.-W. Va. Enc. Dig. 615; 15 Va.-W. Va. Enc. Dig. 577.]

Appeal from Circuit Court, Mecklenburg County.

Judicial sale to James Hardy and another, in the suit of Isabella Coley against Luther Coley and others, was set aside, and a resale ordered, and said purchasers appeal. Reversed.

Irby Turnbull, of Boydton, and *Morton G. Goode*, of Dinwiddie, for appellants.

Reekes & Bedinger, of Boydton, for appellees.

J. B. KING & Co. v. C. W. HANCOCK & SONS.

March 13, 1913.

[77 S. E. 510.]

1. Depositions (§ 56*)—Notice—Service—Mode of Service—Mail.—Code 1904, § 3362, provides that reasonable notice shall be given to the adverse party of taking every deposition; and section 3207 declares that a notice may be served by delivering a copy to the party in person, or, if he be not found at his usual place of abode,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.